

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:

ADAM LAWRENCE AND
VICKI LYNN GRIZZLE,
Debtors.

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CASE NO. 02-49474-DML-13

MEMORANDUM ORDER

Before the court is the Motion of Blue Grass Estates, L.L.P. [sic] to Set Deadline for Assumption or Rejection of Executory Contract (the "Motion"). By the Motion, Blue Grass Estates, L.L.P. ("Blue Grass") asks that the court enter an order pursuant to 11 U.S.C. § 365(d)(2) directing the above-named Debtors ("Grizzles" or "Debtors") to assume or reject a certain contract for Deed (the "Contract") executed by Blue Grass and the Grizzles on December 12, 2000.

The court heard argument on the Motion on February 20, 2003 and requested that the parties file letter briefs. The court has now received and reviewed the submissions of the parties and has again reviewed the record from February 20. The court takes notice of all pleadings on file in this case as of that date, including the proof of claim filed by Blue Grass (the "Claim") to which a copy of the Contract is attached. This memorandum constitutes the court's findings of fact and conclusions of law. FED. R. BANKR. P. 7052 and 9014.

The parties dispute whether the Contract is an executory contract within the meaning of 11 U.S.C. § 365. While Blue Grass argues that it is, Debtors argue that they have equitable title to the real estate which is the subject of the Contract¹ and that Blue Grass is, in fact, a mortgagee.²

The position of the Debtors is supported by the Claim. The Claim is filed for the amount due under the Contract as a secured claim. On the other hand, the court questions how any equitable title of Debtors would mature into legal title. Moreover, 11 U.S.C. § 365(i) provides for treatment of a land sales contract as an executory contract in the vendor's bankruptcy. There appears to be no reason why the character of such a contract would change if the vendee is the debtor.

The court has no evidence before it that the Contract was recorded. This, as well, could complicate any theory for vesting of title based on the document. Debtors, however, have not asserted that the Contract is invalid as a mortgage.³

From oral argument, it is clear Debtors have not been making regular payments on the Contract. It is also clear that Debtors have not been performing their obligations under the

¹ The real estate is Debtors' homestead.

² The contract might represent another arrangement between the parties, and the court does not in this memorandum intend to limit what any party may argue in future proceedings.

³ In any event, the court could not in this contested matter determine that issue. An adversary proceeding would be required to reach that question. FED. R. BANKR. P. 7001(2).

Contract. Whether the Contract is a mortgage or is governed by 11 U.S.C. § 365, Debtors should be making post-petition payments called for by the Contract. Even if the Contract is a mortgage which Debtors could avoid (and the court emphatically does not at this time so hold), until avoidance, Debtors must make current payments.

In the context of a motion under 11 U.S.C. § 365(d)(2) the court might reach the issue of what the Contract in fact is. The court believes such a determination to be premature. The court, therefore, will treat the Motion as one seeking relief from the automatic stay.⁴

Pursuant to 11 U.S.C. § 362(d), the court may condition the continuation of the automatic stay. In this case at this time that is the appropriate result of consideration of the Motion. Continuation of the automatic stay is therefore conditioned upon (1) payment by Debtors to Blue Grass prior to April 1, 2003 of \$289.27; (2) payment by Debtors to Blue Grass prior to April 16, 2003 (and by the 16th day of each succeeding month) of \$289.27; (3) submission by Debtors within 60 days of a plan providing cure of post-petition arrearages due to Blue Grass within 12 months of the entry of this memorandum order.

The court's decision is without prejudice to commencement of an adversary proceeding to determine the nature of the Contract. Likewise, it is without prejudice to commencement of an

⁴ The court has ample authority to condition its stay even absent a motion. 11 U.S.C. § 105.

adversary proceeding to void the effect of the Contract or a contested matter to assume or reject it as an executory contract.

It is so ORDERED.

Signed this the 24 day of March, 2003.


DENNIS MICHAEL LYNN,
UNITED STATES BANKRUPTCY JUDGE